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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,142	08/04/2003	William Brown	010214002-CIP	5090
30184	7590	12/15/2005	EXAMINER	
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339			GORMAN, DARREN W	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,142

Applicant(s)

BROWN, WILLIAM

Examiner

Darren W. Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/16/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The IDS filed on December 16, 2003 is hereby acknowledged and has been placed of record. Please find attached a signed and initialed copy of the PTO 1449.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the device wherein the sealing means is a “silicone bead”, or “tape”, or an “elastomeric washer”, as recited in claim 12; and the device wherein the means for suspending is a “tether”, a “strap”, a “tie”, or a “cooperating hook and loop fastener”, as recited in claims 7, 19 and 29, must be shown or the feature(s) canceled from the claim(s). Currently the drawings only show the device having an “elastomeric sealing ring”, (reference number “27”) as the sealing means, and a “cord” (reference number “60”) as the means for suspending. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The Examiner further strongly recommends that Applicant include reference number "50" in Figures 3-5, for representing the "detents", since Applicant is clearly claiming an embodiment (see claims 3, 15 and 25) that includes both of the disclosed and claimed positioning/retaining arrangements together (i.e. the cooperating flanged portion (31) of the outer tubular member with the positionable elastomeric O-ring seal (27); and the cooperating frictionally engagable nesting detents (50)). It appears that Figures 3-5 show the detents, but the Figures lack reference number "50".

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Regarding each claims 1, 13 and 23, the recitation “said inner and outer tubular members forming a cavity therebetween when said members are engaged” is unclear. As shown, the cavity (35) is clearly the region defined within the inner tubular member, which retains the scented absorbent material. Since this is the case, how can the inner and outer tubular members form the cavity “therebetween”?

Regarding claim 12, since the “sealing means” as defined in claim 1 is “selectively removably positionable”, it is unclear to the Examiner what a “selectively removably positionable” silicone bead, tape, or elastomeric washer would look like when employed with the present invention, since the disclosure only discusses how an “O-ring” 27 can be removably positioned (see page 27, line 20 through page 28, line 18). The disclosure is completely silent as to how the aforementioned alternative sealing means would function as being “removably positionable”.

The claims will be examined as best understood by the Examiner.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

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do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1, 4-7 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Myny et al., USPN 6,648,239.

Myny shows a scent dispenser (10) comprising an outer tubular member (12) having a flanged end portion (as shown in Figure 2, either reference number 14 or 26 meets this limitation); an inner tubular member (20) having a base (16) and a plurality of apertures (28) for emitting scent therethrough, the inner tubular member dimensioned to be slidably received and retained within the outer tubular member; a cavity (inside 20) carrying scented absorbent material (30) within the inner tubular member; and a means for suspending the dispenser (no reference number; see column 4, lines 12-16). Myny further teaches that "Sealing means such as o-rings or the like may be optionally used to provide desired sealing between the housing 12 and caps 14 and 16." (see column 3, lines 14-16). Since the sealing means is an optional element, it is certainly a "selectively removably positionable" element.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myny et al.

Regarding claim 2, the device shown by Myny anticipates all of the recited limitations as set forth in claim 1, however the device of Myny includes inner and outer tubular members having a cylindrical cross-section, rather than a rectangular cross-section.

It is old and well known in the art for scent dispensers having inner and outer telescoping housing members to be shaped in a variety of ways, including cylindrical and rectangular. One having ordinary skill in the art would recognize that the shape of such a device would not have any substantial effect on the function. Further, it is noted that Applicant's own disclosure recognizes functional equivalency of rectangular, square and round cooperating telescoping member shapes (see page 19, lines 19-21).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the inner and outer tubular members shown by Myny, as cooperating tubular members having a rectangular cross-section, as is well-known in the art, since the selection of either of these known functional equivalents as telescoping housing members would be within the level of ordinary skill in the art.

Regarding claims 8 and 9, the device shown by Myny anticipates all of the recited limitations as set forth in claim 1, however Myny is silent as to using any particular colors for the device.

The device shown by Myny is expressly taught for use in deer hunting. One having ordinary skill in the art recognizes that many devices used for hunting deer (including scent dispensers) are camouflaged such that the color of such a device blends into the environment in

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order to decrease the visibility of the device. Further, it is old and well known in the art to color deer hunting devices in a color known as “blaze orange”, which is a “bright” color to human eyesight, but blends into the environment when viewed by a deer. It is also well known in the art to color deer hunting devices in both blaze orange and camouflage, such that the device is easily recognizable by a human and blends into the environment when viewed by a deer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to color the device shown by Myny in a “bright” color and/or a color which blends into the environment, such that the device is easily recognizable by a human and/or blends into the environment when viewed by a deer.

Allowable Subject Matter

10. Claims 3, 10 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 13-31 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Raleigh, Barlics, and Torres, are cited as of interest.

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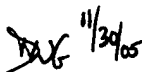
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901.

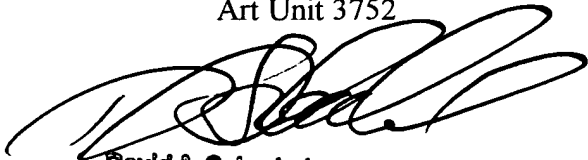
The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752

 11/30/05
DWG
November 30, 2005


David A. Scherbel
Supervisory Patent Examiner
Group 3700